

E-Filed 6/2/06

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS, B.V.,

Plaintiff,

v.

GS MAGIC, INC., et al.,

Defendants.

Case Number C 04-5460 JF

ORDER AWARDING DAMAGES
AND ATTORNEYS' FEES
FOLLOWING ENTRY OF DEFAULT
JUDGMENT

On March 31, 2006, this Court entered default judgment against all Defendants and directed Plaintiff to advise the Court whether Plaintiff would be submitting proof of damages and a request for attorneys' fees. On May 30, 2006, Plaintiff filed a motion seeking compensatory damages in the amount of \$23,600,000, plus enhanced damages of up to three times the compensatory damages, as well as attorneys' fees in the amount of \$934,348.75.

DAMAGES

Plaintiff's request for damages is governed by 35 U.S.C. § 284, which provides in relevant part as follows:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with

1 interest and costs as fixed by the court.

2 When the damages are not found by a jury, the court shall assess them. In either
3 event the court may increase the damages up to three times the amount found or
4 assessed. Increased damages under this paragraph shall not apply to provisional
rights under section 154(d) of this title.

5 Plaintiff requests \$23,600,000 in compensatory damages, which primarily represents lost profits
6 as a result of Defendants' infringement and attempts to undercut Plaintiff in the market.

7 Calculation of such profits necessarily involves some speculation. However, Plaintiff's
8 projections are well-supported by the motion and accompanying declarations. Given the
9 evidence in the record that Defendants' infringement of Plaintiffs' rights was willful, and the fact
10 that Defendants defaulted in this case, the Court will draw all reasonable inferences in Plaintiffs'
11 favor. Accordingly, the Court will award compensatory damages in the requested amount of
12 \$23,600,000.

13 Enhanced damages of up to three times compensatory damages may be awarded when a
14 party is found to have willfully infringed or to have acted in bad faith. 35 U.S.C. § 284; *Cyber*
15 *Corp. v. FAS Technologies, Inc.*, 138 F.3d 1448, 1461 (Fed. Cir. 1998). Willful infringement
16 does not mandate enhanced damages, however. *Id.* The primary consideration is the
17 egregiousness of the defendant's conduct based on all the facts and circumstances. *Id.*

18 The Court has credited all of Plaintiff's evidence with respect to willfulness and lost
19 profits, and it has relied heavily on this evidence in concluding that the magnitude of requested
20 compensatory damages is appropriate in this case. However, in the absence of a developed
21 record, the Court is not inclined to enhance those damages further in reliance on the same
22 evidence of willfulness. Accordingly, the Court will deny the request for enhanced damages.

23 ATTORNEYS' FEES

24 Plaintiff's request for attorneys' fees is governed by 35 U.S.C. § 285, which provides that
25 "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party."
26 When considering whether to award attorney fees under this section, a court must determine
27 whether there is clear and convincing evidence that the case is "exceptional" within the meaning
28 of the statute and, if so, whether an award of attorney fees to the prevailing party is warranted.

1 *Interspiro USA v. Figgie Int'l Inc.*, 18 F.3d 927, 933 (Fed. Cir. 1994). "The prevailing party
 2 may prove the existence of an exceptional case by showing: inequitable conduct before the PTO;
 3 litigation misconduct; vexatious, unjustified, and otherwise bad faith litigation; a frivolous suit or
 4 willful infringement." *Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022,
 5 1034 (Fed. Cir. 2002). "Litigation misconduct and unprofessional behavior are relevant to the
 6 award of attorney fees, and may suffice, by themselves, to make a case exceptional." *Id.*

7 The Court concludes that Defendants' willful infringement of Plaintiff's patents, as well
 8 as their conduct during the course of this litigation (including backing out of a settlement
 9 agreement, ceasing communications with their attorneys and failing to retain new counsel when
 10 ordered to do so by the Court), renders this an exceptional case within the meaning of § 285.
 11 While it declines to award enhanced damages for the reasons stated above, the Court concludes
 12 that Plaintiff is entitled to recover its attorneys' fees based upon this record. Accordingly, the
 13 Court will award attorneys' fees in the requested amount of \$934,348.75.

14 ORDER

15 The Court HEREBY ORDERS AND ADJUDGES that Plaintiff recover from Defendants
 16 compensatory damages in the amount of \$23,600,000 pursuant to 35 U.S.C. § 284 and attorneys'
 17 fees in the amount of \$934,348.75 pursuant to 35 U.S.C. § 285.

18
 19
 20
 21 DATED: 6/2/06

22
 23 
 24 JEREMY FOGEL
 25 United States District Judge
 26
 27
 28

1 Copies of Order served on:

2
3 Counsel for Plaintiff:

4 Daniel E. Alberti dalberti@mwe.com, clodahl@mwe.com

5 Lisa Sattler Blackburn lsattler@mwe.com, vfarias@mwe.com

6 Christopher Duane Bright cbright@mwe.com

7
8 Defendants:

9 GS Magic and GS Magicstor
10 30F, Fuzhong International Plaza
11 126 Xinhua Road
12 Guiyang, Guizhou, PR China 5500022

13 GS Magic and GS Magicstor
14 No. 48, Yingbin West Road
15 Jinyang District
16 Guiyang, Guizhou, PR China 550081

17 Riospring, Inc.
18 1490 McCandless Drive
19 Milpitas, CA 95035
20
21
22
23
24
25
26
27
28